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No. 75-1076

In the Supreme Court of the United States

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v.

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BRIEF FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1076

WILLIAM C. HUDDLESTON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on January 8, 1973. The petition for a writ of certiorari was filed on February 5, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether 18 U.S.C. 922(a)(6), which proscribes the making of false statements in connection with the "acquisition" of a firearm, covers the redemption of a firearm from a pawnshop.

STATUTE INVOLVED

18 U.S.C. 922(a)(6):

(a) It shall be unlawful—

(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter.

STATEMENT

After a non-jury trial in the United States District Court for the Central District of California, petitioner was convicted of three counts of making a false statement in connection with the acquisition of firearms, in violation of 18 U.S.C. 922(a)(6). He was sentenced to concurrent three year prison terms, all but twenty days (on weekends) being suspended, and was placed on probation for five years.

The evidence showed that petitioner pawned three rifles at a local pawnshop and sought to redeem them a few months later. In redeeming the weapons, petitioner was required by the proprietor to fill out a Department of Treasury "Firearms Transaction Record" (Form 4473) for each of the three rifles (see, e.g., Pet. App. 4). On each of these forms he

falsely answered question "21" which asked if he had ever been convicted of a crime punishable by more than one year's imprisonment.[1] He also signed on each form a statement certifying all responses to be true (Exhibits 2, 3, 4; Tr. 72, 93). In truth, petitioner had previously been convicted under California law of a felony (writing checks without sufficient funds) punishable by a maximum term of fourteen years' imprisonment, although he actually served only thirty days in jail. This fact, if revealed to the store proprietor, would have precluded him from transferring the weapons to petitioner. Section 922(d) makes it unlawful for any dealer (including a pawnbroker) "to sell or otherwise dispose of any firearm" to one known to have been so convicted.

A government agent testified that, when petitioner was questioned as to his incorrect responses he admitted that he had known when filling out the form that he was a felon and that his answer was untrue, but that he considered it unimportant because he was redeeming and not purchasing the weapons (Tr. 72). Petitioner testified at trial that he was aware that he could have been imprisoned for more than one year on the earlier felony conviction and explained his incorrect response by claiming that he had not read the form but had merely filled it in as directed by the pawnbroker (Tr. 149–151).

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[1] Question "21" cautions the respondent that "The actual sentence given by the judge does not matter—a yes answer is necessary if the judge could have given a sentence of more than one year."

ARGUMENT

1. Petitioner contends that the prohibition in 18 U.S.C. 922(a)(6) against making false statements in connection with the "acquisition" of a firearm should be read as not covering the redemption of a firearm from a pawnshop by the original owner of the weapon. We submit that such a restrictive interpretation of Section 922(a)(6) would be inconsistent with the language of Section 922(a)(6) and related sections of the Gun Control Act, as well as the intent of Congress in enacting the statute.

Section 922(a)(6) prohibits false statements made "in connection with the acquisition or attempted acquisition of any firearm" if such statement is material "to the lawfulness of the sale *or other disposition* of such firearm" under other provisions of the Act (*emphasis added*). That language seems on its face to cover any and all transfers of firearms to recipients. Moreover other sections of Title IV similarly speak in terms broadly encompassing any disposition of firearms, rather than merely formal sales. Section 922 (a)(1) prohibits all but licensed persons from "dealing in firearms or ammunition." Section 922(b)(1) forbids such licensed individuals "to sell or deliver" firearms to juveniles. Section 922(b)(2) makes it a crime for dealers "to sell or deliver" weapons to persons in any state where "at the place of sale,

*delivery or other disposition" such transfer would violate local law. Section 922(d) provides that arms dealers may not "sell or otherwise dispose" of any firearm to convicted criminals or narcotic addicts. Finally, Section 922(g) requires all weapons dealers to maintain "records of importation, production, shipment, receipt, sale or other disposition, of firearms * * *" (emphasis added). With the statute so obviously comprising a comprehensive regulatory scheme for all types of firearms disposition, we submit that it would be contrary to the legislative intent to restrict the enforcement of one section of the law to a more narrow compass.*

*The text and legislative history of Title IV of the Gun Control Act is also contrary to petitioner's argument. Pawnbrokers were specifically included within the definition of "dealers" (Section 921(a)(11), (12)) so as to include their activities within the range of the statute's regulation. See S. Rep. No. 1097, 90th Cong., 2d Sess., pp. 111–112. Indeed, given the definition of pawnbroker in Section 921(a)(12) as one "whose business * * * includes the taking or receiving, by way of pledge or pawn, or any firearm * * * as security for the payment or repayment of money," it is incongruous to argue that Congress overlooked the redemption situation and thus did not intend the term "acquisition" in Section 922(a)(6) to cover redemptions. Similarly, Congress enumerated a variety of exemptions from the provisions of Title IV (see Sections*

922(a)(2) and 925); yet, while Section 921(a)(12) obviously demonstrates a cognizance of the redemption situation, such a pawn transaction is not among these exemptions.

Congress also manifested a variety of motives in enacting Title IV, which support a reading of the term "acquisition" in Section 922(a)(6) to encompass redemption. Most apparent was the desire by Congress to prevent those convicted of serious crimes from possessing firearms that might subsequently be utilized in further criminal enterprises. See S. Rep. No. 1097, *supra*, 108. This goal is enhanced by preventing such criminals from regaining weapons once placed in the market place.[9] By providing that a form be filled out

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[9] This legislative history is a sufficient answer to petitioner's claims that "since most states and cities already require pawnshops to keep full and accurate records with regard to persons who pawn items," federal coverage is superfluous, and that the application of Section 922 to cases such as this, (1) conflicts with the intent of Congress by "in effect, forcibly registering guns presently owned or owned before the enactment of the 1968 laws" (Pet. 910), (2) constitutes "an unreasonably broad method to prevent guns [from] coming into the hands of the wrong persons" (Pet. 10-11), and (3) operates to "confiscate" weapons by effectively making it impossible for convicted felons to maintain them from pawnbrokers. Congress obviously was not only concerned with record keeping or gun registration, but with keeping weapons out of the hands of convicted felons (18 U.S.C. 922(d); 18 U.S.C. App. 1202(a)). There is no dispute that had petitioner truthfully answered the questionnaire it would have been unlawful for the pawnbroker to have delivered the weapon to him (18 U.S.C. 922(d)). Moreover, petitioner's receipt of the three weapons, at least one of which (Pet. App. B) "has previously traveled in interstate commerce," would

by all who acquire firearms from dealers, Congress also intended to expand the ability of law enforcement agencies to trace stolen weapons and those used in furtherance of criminal acts. See S. Rep. No. 1097, *supra*, at 203. Thus, by requiring recordation even of redemption transactions, a more expansive file of firearms is available for law enforcement officers. Finally, Title IV was also intended to provide assistance to local law enforcement agencies, and thus Section 923(g) provides that information obtained by federal agencies under the auspices of the act should be made available under the agencies. S. Rep. No. 1097, *supra*, at 28, 81, 117. Here, again, a more expansive firearms file would enhance this purpose.

Petitioner's claim that Congress has no power to regulate transactions such as that at issue here—because "the likelihood that the pawnor's firearm has been in commerce in the recent past is highly speculative" (Pet. 12–13)—overlooks the well settled principle that "[w]here the class of activities is regulated and that class is within the reach of federal power, the courts have no power to 'excise, as trivial, individual instances' of the class" (*Perez* v. *United States*, 402

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be sufficient to constitute a violation of 18 U.S.C. App. 1202(a), (*United States* v. *Bass*, 404 U.S. 336, 350). Section 1202(a) makes it an offense for "[a]ny person" who has a prior felony conviction to receive any firearm "in commerce or affecting commerce." It is thus clear that whatever Congress may have intended regarding "confiscation" of weapons from "law abiding citizens" (P.L. 90-351, Section 901(a), 82 Stat. 225), the adoption of 18 U.S.C. App. 1202(a) and 18 U.S.C. 922(d) makes it clear that Congress established a variety of mechanisms to keep guns away from convicted felons.

U.S. 146, 154). Petitioner does not dispute that the "class of activities" here at issue—the acquisition of firearms by convicted felons from commercial establishments—"is within the reach of federal power."[*] Congress has expressly found (18 U.S.C. App. 1201) that "the receipt, possession, or transportation of a firearm by felons" and other specified persons constitutes:

> (1) a burden on commerce or threat affecting the free flow of commerce,
>
> (2) a threat to the safety of the President of the United States and Vice President of the United States,
>
> (3) an impediment or a threat to the exercise of free speech and the free exercise of a religion guaranteed by the first amendment to the Constitution of the United States, and
>
> (4) a threat to the continued and effective operation of the Government of the United States and of the government of each State guaranteed by article IV of the Constitution.

In light of these findings, the fact that in a given case a person may receive a weapon, which "has not been in commerce in the recent past" (Pet. 12–13),

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[*] *See United States v. Crandall*, 453 F. 2d 1216, 1217 (C.A. 1); *United States v. O'Neill*, 467 F. 2d 1372, 1373–1374 (C.A. 2); *United States v. Hudson*, 460 F. 2d 1262, 1263 (C.A. 4), certiorari denied, 409 U.S. 872; *United States v. Nelson*, 458 F. 2d 556, 559 (C.A. 5); *United States v. Garner*, 465 F. 2d 265, 267 (C.A. 7); *Cody v. United States*, 460 F. 2d 34 (C.A. 8); *United States v. Menna*, 451 F. 2d 982 (C.A. 9), certiorari denied, 405 U.S. 961.

cannot affect the validity of the reasonable regulatory scheme here at issue.[4]

2. While the holding of the court of appeals here is consistent with a similar decision of the Court of Appeals for the Tenth Circuit (*United States* v. *Beebe*, 467 F. 2d 222, pending on petition for certiorari, No. 72-5800), the Court of Appeals for the Fifth Circuit has held to the contrary in *United States* v. *Laisure*, 460 F. 2d 709. There the court perceived an ambiguity in the language of Section 922 (a)(6) and, relying on *United States* v. *Bass*, 404 U.S. 336, invoked a rule of lenity in favor of the accused.[5] As we have shown above, a

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[4] Contrary to petitioner's claim, the application of Section 922 here does not constitute a taking of property "without any proceeding or due process determination of whether it is actually illegal for him to possess the firearm" (Pet. 5). No such proceeding is necessary here. By expressly prohibiting the pawnbroker from delivering weapons to petitioner and other convicted felons (18 U.S.C. 922(d)), Congress has determined that such persons may not lawfully obtain them, even though the actual receipt of the weapons would not under all circumstances be a crime. (See *United States* v. *Bass*, 404 U.S. 336, 350.) Moreover, as applied here, Section 922(a) does not effect a "taking" of petitioner's property. The guns did not belong to petitioner but were the property of his wife (Tr. 9), who would have a legal right to obtain the weapons from the pawnbroker.

[5] In *Bass* the issue was whether 18 U.S.C. App. 1202(a) (Title VII of the Omnibus Crime Control and Safe Streets Act of 1968) prohibited any and all possession by a felon of a firearm or only applied to possession that somehow affected interstate commerce. There, foremost in this Court's invocation of the rule of lenity was the fact that Section 1202(a) did not give "a fair warning * * * in language that the common world will understand, of what the law intends to do if a certain line is passed." 404 U.S. at 348. Here, the statute is clear;

reading of Section 922(a)(6) and of Title IV fails to disclose any uncertainty as to the meaning of the statute, or any doubt as to its validity. Although there is thus a conflict between the circuits, we submit that the case was properly decided below and is not of sufficient consequence to warrant plenary review. This is so because if petitioner's construction of Section 922(a)(6) prevails, a person in his place could still be prosecuted for the same acts pursuant to Section 924(a), which provides:

> Whoever violates any provision of this chapter or knowingly makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter * * * [shall be guilty of a crime].

Section 923(g) requires all firearms dealers, including pawnbrokers, to keep records, including Form 4473, of all weapons "dispositions" made by them. It can hardly be argued that a pawn redemption is not a "disposition." Accordingly, it is of little consequence whether 922(a)(6) is held to be applicable to pawn transactions.

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answers, Form 4473 specifies twice that untruthful answers to any of the simple yes or no questions asked can result in federal prosecution.

Section 921(a) was enacted pursuant to a finding by Congress (Pub. L. 90-351, Section 901(a)(2) and 901(a)(3), 82 Stat. 225), "that only through adequate Federal control over interstate and foreign commerce in these weapons, and over all persons engaging in the business of importing, manufacturing, or dealing in them," can "the prevalence of lawlessness and violent crime in the United States" be "properly dealt with, and effective State and local regulation of this traffic be made possible."

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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MARCH 1973.

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In the Supreme Court
OF THE
United States
October Term, 1973

No. 72-1076

William G. Hennington, Petitioner
v.
United States of America, Respondent

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF FOR PETITIONER

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WILLIAM G. HUDDLESTON, *Petitioner*
v.
UNITED STATES OF AMERICA, *Respondent*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR PETITIONER

OPINION BELOW

The majority opinion of the United States Court of Appeals for the Ninth Circuit and the concurring and dissenting opinion of Chief Judge Chambers are reported at 478 F.2d 892. A copy is attached hereto as Appendix A.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1) and under Rule 21 of the Rules of this Court.

QUESTION PRESENTED

Does the term "acquisition" in 18 U.S.C. §922(a)(6), which prohibits false statements "in connection with the acquisition . . . of any firearm," cover the redemption of a firearm from pawn by the pawnor?

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

1. 18 U.S.C. §922(a)(6) provides:

> "(a) It shall be unlawful — — (6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter;"

2. 26 C.F.R. §178.124(a) provides in part:

> "A licensed . . . dealer shall not sell or otherwise dispose, temporarily or permanently, of any firearm to any person, other than another licensee, . . . unless he records the transaction on a firearms transaction record, Form 4473: *Provided*, That a firearms transaction record, Form 4473, shall not be required to record the disposition made of a firearm delivered to a licensee for the sole purpose of repair or customizing when such firearm is returned to the person from whom received."

3. The United States Constitution, Amendment V, provides in part:

> "No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

4. The Commerce Clause of the United States Constitution, Article I, Section 8, Clause 3 provides in part:

> "The Congress shall have Power . . . to regulate Commerce . . . among the several States . . . ."

STATEMENT OF THE CASE

On September 18, 1979, after a non-jury trial in the United States District Court for the Central District of California, petitioner was convicted of three violations of 18 U.S.C. §922(a)(6) for making material false statements in connection with the acquisition of three firearms from a licensed firearm dealer. Section 922(a)(6) is quoted in full above.

In late 1971, petitioner pawned three of his family's rifles, App. 81-88 (Testimony of Petitioner), and received loans of $10.00, $10.00, and $25.00. App. 49-54 (Court's Exhibits 1, 2 and 3).

In February and March, 1979, petitioner redeemed the three rifles from pawn. In connection with the three redemptions, petitioner was required to complete Treasury Department Form 4473, entitled "Firearms Transaction Record". App. 43-48 (Government Exhibits 2, 3, and 4). On the forms, petitioner answered "No" to Question 8b: "Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year?"